

Oct 27, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

HEIDI COOPER on behalf of herself  
and all others similarly situated,

Plaintiff,

v.

EAGLE POINTE ICG, LLC, a  
Washington limited liability company,  
and SECURITY PROPERTIES  
RESIDENTIAL, LLC, a Washington  
corporation,

Defendants.

No. 2:20-cv-00305-SMJ

**ORDER GRANTING MOTION  
FOR REMAND**

Before the Court is Plaintiff Heidi Cooper's Motion for Remand, ECF No. 4.<sup>1</sup> Plaintiff argues that this Court should remand this matter to state court because (1) Defendants' removal was untimely and (2) this Court does not have subject-matter jurisdiction. Because this Court finds that Defendants untimely removed this case, as discussed below, it does not reach the issue of whether Plaintiff's claim

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<sup>1</sup> Plaintiff originally noted the motion for oral argument thirty days after filing, October 1, 2020. *See* ECF No. 3. Plaintiff then filed an otherwise identical motion with a corrected hearing date more than seventy days after filing, November 5, 2020, consistent with Local Civil Rule 7(i)(2). *See* ECF No. 4. The Court denied as moot the original motion on October 6, 2020. ECF No. 10.

1 presents a Federal Question, allowing for jurisdiction under 28 U.S.C. § 1331.  
2 Having reviewed the record and pleadings in this matter, this Court is fully informed  
3 and grants the Motion for Remand.

#### 4 **BACKGROUND**

5 Plaintiff brought a claim in Spokane County Superior Court, alleging  
6 Defendants violated Washington State's Residential Landlord Tenant Act (RLTA),  
7 Rev. Code Wash. 59.18, *et seq.* ECF No. 1-2 at 4–5. Defendants removed the case  
8 to federal court on August 25, 2020. ECF No. 1.

9 Plaintiff attempted personal service on Defendants at the address of their  
10 registered agent on or about May 5, 2020. ECF No. 1-2 at 21–22. Security guards  
11 turned away the service-processor when he attempted to enter the building,  
12 ostensibly because of restrictions on in-person interactions due to the COVID-19  
13 pandemic.<sup>2</sup> *See id.* at 24. Plaintiff sent a copy of the Summons and Complaint via  
14 Certified Mail-Return Receipt Requested on May 18, 2020. According to the return  
15 receipt, which was received by Plaintiff on June 1, 2020, Defendants signed for the  
16 documents on May 26, 2020. *Id.* at 26.

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17  
18 <sup>2</sup> The parties debate whether Plaintiff did her due diligence in attempting personal  
19 service before conducting service by mail, especially in light of the difficulties  
20 posed by the COVID-19 pandemic. *See* ECF No. 5 at 3; ECF No. 6 at 3; *see also*  
Rev. Code Wash. 23.95.450(2). Because the Court concludes that Defendants  
waived formal service of the Summons and the Complaint, it need not resolve this  
issue.

1 Defense counsel appeared on August 7, 2020. ECF No. 1-2 at 19. On August  
2 25, 2020, ninety-one days after receiving the Summons and Complaint, Defendants  
3 filed an answer to Plaintiff's complaint. *Id.* at 37. Nowhere in the answer did  
4 Defendants raise the argument that they were not properly served. *See id.* at 36–37  
5 (affirmative defenses). Then, the same day, Defendants removed this action to  
6 Federal Court. ECF No. 1. And in the Notice of Removal, Defendants explicitly  
7 stated that “[a]ll parties to this action have been served.” *Id.* at 3.

## 8 DISCUSSION

### 9 A. Defendants untimely removed this matter to Federal Court

10 A defendant may remove an action from state court to federal court where  
11 “the district courts of the United States have original jurisdiction.” 28 U.S.C. §  
12 1441(a). “The notice of removal of a civil action or proceeding shall be filed withing  
13 30 days after the receipt by the defendant, through service or otherwise, of a copy  
14 of the initial pleading.” 28 U.S.C. § 1446(b)(1). The time for removal under 28  
15 U.S.C. § 1446 “is imperative and mandatory, must be strictly complied with, and is  
16 to be narrowly construed.” *United States ex rel. Walker v. Gunn*, 511 F.2d 1024,  
17 1026 (9th Cir. 1975); *see also O’Halloran v. Univ. of Wash.*, 856 F.2d 1375, 1380  
18 (9th Cir. 1988) (“[S]ection 1441 is strictly construed against removal.”). Although  
19 courts have, as Defendants point out, recently “softened the strictness” of this  
20 principle, the underlying federalism concerns remain. *See Myer v. Nitetrain Coach*

1 Co., 459 F. Supp. 2d 1074, 1076 (W.D. Wash. 2006) (citing *Murphy Bros. Inc. v.*  
2 *Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 355 (1999)).

3 Defendants argue that because Plaintiffs did not effectuate personal service,  
4 the period for removal never began to run. ECF No. 5 at 8. But Defendants’  
5 argument fails because Defendants waived person service. Defendants signed for  
6 the Summons and Complaint on May 26, 2020. There is no dispute that Defendants  
7 had actual notice of the Complaint. This is not the case of *Murphy Bros.*, where  
8 Plaintiffs abused the “receipt rule,” creating unfairness to foreign defendants,  
9 circumventing international treaties and “trap[ping]” opponents in state court by  
10 sending a “courtesy copy” via facsimile. 526 U.S. at 356; *see also Pic-Mount Corp.*  
11 *v. Stoffel Seals Corp.*, 708 F. Supp. 1113, 1118 (D. Nev. 1989) (“receipt of an initial  
12 pleading begins the thirty-day removal period, irrespective of the technicalities of  
13 state service of process laws”).

14 Defendants cannot have it both ways. Their conduct is consistent with a  
15 waiver of personal service, only bringing up the defense in their response to this  
16 motion. Defendants’ answer and notice and removal both indicate that Defendants  
17 have been served. *Compare* ECF Nos. 1, 1-1, *with* ECF No. 5. The 30-day period  
18 to remove this case thus began on May 26, 2020, when Defendants received the  
19 complaint, and expired on June 25, 2020. *See* 28 U.S.C. § 1446(b). So, Defendants’  
20 removal of this action is untimely.

**B. Attorney Fees**

Plaintiff asks that this Court award her attorney fees and costs associated with the Motion for Remand. But Plaintiff does not specify an amount of attorney fees and costs sought. Nor does she attach any declarations detailing hours worked on the Motion for Remand. The Court thus declines consider Plaintiff's request. Plaintiff may file a separate motion for reasonable attorney fees and costs, accompanied by proper documentation, which the Court would then consider.

Accordingly, **IT IS HEREBY ORDERED:**

- 1.** Plaintiff's Motion for Remand, **ECF No. 4**, is **GRANTED**.
- 2.** This Court **REMANDS** this case to state court.
- 3.** Plaintiff's request for attorney fees, **ECF No. 4 at 6–7** is **DENIED WITH LEAVE TO RENEW**.

**A.** Absent a motion for attorney fees and costs, all parties shall bear their own costs and attorney fees.

- 4.** All pending motions are **DENIED AS MOOT**.
- 5.** All hearings and other deadlines are **STRICKEN**.

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1           **6.**     The Clerk's Office is directed to **CLOSE** this file.

2           **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and  
3 provide copies to all counsel.

4           **DATED** this 27<sup>th</sup> day of October 2020.

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6                                 SALVADOR MENDOZA, JR.  
                                    United States District Judge